IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 2117 OF 2005

IN

SUIT NO. 1135 OF 2005

Laxman Yellappa Rajgole ....**Plffs.**
vs.
Nitin Mahadeo Pawar and Ors. .....**Defnds.**

Mr. R.A. Yadav for the plaintiffs.

Mr. P.B. Naik Navre for the defendant no.1 and 2.

CORAM: S.U. KAMDAR, J.

DATE : 22ND AUGUST 2005.

P.C. :

1. By consent of the parties motion is placed on board for hearing and final disposal.

2. The suit is file for specific performance of an agreement inrespect of a flat bearing no. 101, Nikki Nagar Co-op Hsg. Soc Ltd, First Floor, ‘D’ Bldg, Kalyan (W) and take

possession thereof. Reliance is placed on an agreement which is at Ex.B. The said agreement is a loan agreement. However the learned counsel appearing for the plaintiffs relies upon Clause 3 and 4 thereof which reads as under :

> "3. The Debtor hereby undertakes to pay to the creditor the abovesaid friendly loan of Rs.2,50,000/- without any interest thereon, within eleven months from the date of execution of this agreement without fail.
>
> 4. That if the debtor fails to repay the said friendly loan of Rs.2,50,000/- to the Creditor within the stipulated period of eleven months, in that event Debtor shall execute agreement for sale of Flat No.101, 1st floor, 'B' building, Nikki Nagar co-op Hsg. Soc.Ltd, Adhar Wadi, Kalyan (W), in favour of the creditor, for which any family member of the Debtor shall have no objection for the same."

3. Plain reading of the agreement makes it clear that there is no agreement for sale executed inrespect of the aforesaid period and in view thereof the question of granting any order does not arise. Motion dismissed. No order as to costs.

SD/-

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